

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

WHITE HAWK RANCH, INC.

PLAINTIFF

vs.

Civil Action No. 1:91cv29-D-D

CARROLLA S. HOPKINS  
d/b/a Goodwill Shasta River Ranch

DEFENDANT

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiff for the entry of summary judgment with regard to its claims in the case at bar. Finding that the majority of the plaintiff's claims are encompassed by a valid settlement agreement, the court shall dismiss those claims. As to the plaintiff's claim that the defendant has breached the terms of the settlement agreement, however, the undersigned is of the opinion that the plaintiff is entitled to recover on that claim. There is no genuine issue of material fact as to this matter, and the plaintiff is entitled to the entry of a judgment as a matter of law.

. Background

The plaintiff initiated this cause on January 31, 1991, with the filing of its complaint. Central to this litigation is the sale of a polled Hereford bull named "Trustmark." It is sufficient to note that the plaintiff charged that the defendant<sup>1</sup> had agreed to purchase a one quarter (25%) interest in Trustmark, but failed to fulfill her obligations in that regard. The sale of this quarter interest of Trustmark and related transactions formed the crux of this cause. After the completion of discovery and proccession of this litigation, however, the parties entered into a settlement agreement on the day set for trial of this matter before the undersigned. After the agreement of the parties was announced to the court, counsel for the

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<sup>1</sup> Throughout most of this litigation, this matter proceeded on the plaintiff's claims against two defendants - Corrolla S. Hopkins and Lance J. Hopkins. By order dated August 13, 1997, the undersigned dismissed defendant Lance J. Hopkins from this case by reason of pending bankruptcy proceedings in California. White Hawk Ranch v. Hopkins, Civil Action No. 1:91cv29-D-D (N.D. Miss. Aug. 13, 1997) (Order Dismissing Party). As no proof has been presented to this court that the California proceedings are no longer pending, this court has not revisited the matter of his presence in this cause.

plaintiff dictated into the record the terms of the agreement. Essentially, the defendant was to pay the plaintiff a total of \$75,000.00:

[ \$20,000.00] in fourteen days from today, \$20,000.00 six months from now, \$20,000.00 twelve months from now, and the remaining balance of \$15,000.00 six months after that. Which is eighteen months from now.

Transcript of Settlement Agreement, p. 2. In exchange for these monetary payments, the plaintiff would make certain transfers to the plaintiff:

Mr. Carmody: In exchange for that, you will get a quarter interest in the bull, Trustmark, and the six months possessory interest starting November the first through April the thirtieth, being your period of possession. You will get a quarter interest in all future semen sales starting January 1, 1994. In order to secure the payments, we will be entitled to a mortgage on your [Goodwill Shasta River Ranch] property.

Transcript of Settlement Agreement, p. 2. Of course, one primary term of this settlement agreement was that the plaintiff dismiss all of its then pending claims against the defendant Carrola S. Hopkins.

During the discussion of the settlement agreement's terms, the undersigned informed the parties that this court would tentatively dismiss the matter without prejudice while awaiting final consummation of this agreement.

THE COURT: . . . . I'm going to dismiss the case, but will retain jurisdiction. [The court will] retain jurisdiction to reopen the case in the event that there's some problem here, that somebody doesn't live up to the terms of the settlement.

Transcript of Settlement Agreement, p. 7. The defendant made the initial payment of \$20,000.00 to the plaintiff, and executed a promissory note guaranteeing the completion of the remaining payments. Unfortunately, however, this court's previous statement foreshadowed today's consideration of this cause. No further payments were made pursuant to the terms of the promissory note. The undersigned had dismissed this cause by order dated December 7, 1993, but vacated that order and reopened this cause by order dated October 12, 1994. White Hawk v. Hopkins, Civil Action No. 1:91cv29-D-D (N.D. Miss. Oct. 12, 1994) (Order Granting Motion to Vacate Judgment). Following the reopening of this matter, the plaintiff reasserted in an amended complaint all of the claims it had originally filed against the

defendant. Additionally, however, White Hawk asserted a claim against the defendant for breach of the settlement agreement. The matter is now before the court on the plaintiff's motion for summary judgment.

#### . Discussion

##### . Summary Judgment Standard

Summary judgments shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden rests upon the party seeking summary judgment to show to the district court that an absence of evidence exists in the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713 (5th Cir.1996); Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 399 (5th Cir.1996). Once such a showing is presented by the moving party, the burden shifts to the non-moving party to demonstrate, by specific facts, that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Texas Manufactured Housing Ass'n, Inc. v. City of Nederland, 101 F.3d 1095, 1099 (5th Cir.1996); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir.1994). Substantive law will determine what is considered material. Anderson, 477 U.S. at 248, 106 S.Ct. at 2510; see Nichols v. Loral Vought Sys. Corp., 81 F.3d 38, 40 (5th Cir.1996). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248, 106 S.Ct. at 2510; see City of Nederland, 101 F.3d at 1099; Gibson v. Rich, 44 F.3d 274, 277 (5th Cir.1995). Further, "[w]here the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Anderson, 477 U.S. at 248, 106 S.Ct. at 2510; see City of Nederland, 101 F.3d at 1099. Finally, all

from. See Anderson, 477 U.S. at 254, 106 S.Ct. at 2513; Banc One Capital Partners Corp. v. Kneipper, 67 F.3d 1187, 1198 (5th Cir.1995); Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir.1994); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir.1994).

However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir.1994); Guillory v. Domtar Industries Inc., 95 F.3d 1320, 1326 (5th Cir.1996); Richter v. Merchants Fast Motor Lines, Inc., 83 F.3d 96, 97 (5th Cir.1996). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." Little, 37 F.3d at 1075 (emphasis omitted); see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188, 111 L.Ed.2d 695 (1990).

#### . The Settlement Agreement

It appears undisputed that the defendant timely made payment of the initial \$20,000.00. She did not, however, make any remaining payments. Exhibit "B" to Plaintiff's Motion, Affidavit of Patsy Hendrick. Consequently, the plaintiff seeks an entry of summary judgment on the promissory note executed by the defendant for the payment of promised amounts. Plaintiff's Motion, p.2. In response, the defendant charges that it is the plaintiff who is in breach of the settlement agreement.

Gary Hendrick contracted with . . . T-Bar C Cattle Company in Canada on behalf of the Trustmark owners for the sale of semen and the disbursement of profits to all owners. Since that date of ownership by Defendant after settlement there has been no accounting as to amounts of semen stored or sold and no profit statement or profit disbursement to Hopkins to date.

. . .

Defendant would show that since "T-Bar" was Hendrick's agent for all sales of [Trustmark's] semen in Canada, including Defendant's share of sales in Canada and since he took no steps to direct his agent to provide any accounting to Defendant for Canadian sales, it is the plaintiff who has breached the settlement agreement.

Defendant's Response, p.2. Ms. Hopkins offers no other response to the plaintiff's motion.

Essentially, then, the defendant seeks to excuse her nonperformance of the settlement contract/promissory note by demonstrating a breach of that same contract by the plaintiff. It

is basic hornbook law that an adverse party's breach of contract may excuse a party's nonperformance of his contractual obligations.

[A] party may not insist on the performance of a contract or a provision thereof where he himself is guilty of a material or substantial breach of that contract or provision. The party first committing a substantial breach of a contract cannot maintain an action against the other contracting party for a subsequent failure to perform if the promises are dependent.

17A Am. Jr. 2d Contracts § 701. The adverse party's breach, however, must be material to excuse such nonperformance.

[W]here the nonperformance of a party to the contract is innocent, does not thwart the purpose of the bargain, and is wholly dwarfed by that party's performance, the breaching party has substantially performed its obligations and the non-breaching party is not excused from its responsibility under the contract.

17A Am. Jr. 2d Contracts § 701. Mississippi also follows the application of these principles.

The termination of a contract is an "extreme" remedy that should be "sparsely granted." See, e.g., Lipsky v. Commonwealth United Corp., 551 F.2d 887, 895 (2d Cir.1976); 17A C.J.S. Contracts § 422(1), at 517-18 (1963). Termination is permitted only for a material breach. A breach is material when there "is a failure to perform a substantial part of the contract or one or more of its essential terms or conditions, or if there is such a breach as substantially defeats its purpose," Gulf South Capital Corp. v. Brown, 183 So.2d 802, 805 (Miss.1966), or when "the breach of the contract is such that upon a reasonable construction of the contract, it is shown that the parties considered the breach as vital to the existence of the contract," Matheney v. McClain, 248 Miss. 842, 849, 161 So.2d 516, 520 (1964).

Materiality is ordinarily a question of fact, e.g., Hensley v. E.R. Carpenter Co., 633 F.2d 1106, 1110 (5th Cir.1980), albeit one of ultimate fact, not evidentiary fact. The standard for determining materiality must necessarily be both "imprecise and flexible" to "further the purpose of securing for each party his expectation of an exchange of performances." Restatement (Second) of Contracts § 241 comment a (1981).

UHS-Qualicare, Inc. v. Gulf Coast Community Hosp., 525 So. 2d 746, 757 (Miss. 1987).

Central to this court's inquiry, then, is whether the plaintiff committed a breach of its obligations under the settlement contract and whether or not any such breach was a "material" one.

Upon review of the record in this matter, the undersigned cannot say that any reasonable juror would find that the plaintiff has committed a material breach of the settlement contract. The defendant claims that the plaintiff breached the contract by failing to ensure that

the defendant received disbursements and accounting regarding Canadian semen sales. The only relevant proof available to the court regarding this sort of breach is the affidavit statement of Gary Hendrick, a corporate officer of the plaintiff:

On or about February 2, 1994, in accordance with the terms of the settlement agreement announced to the court on December 6, 1993, I sent a letter to T Bar C Cattle Company in Saskatoon, Saskatchewan confirming that one quarter interest in the semen sales proceeds were to be sent "directly to the following owners as their ownership share represents: . . . Goodwill Shasta River Ranch . . ." Attached as Exhibit "A" to my affidavit is a copy of the letter.

Exhibit "B" to Plaintiff's Rebuttal, Affidavit of Gary Hendrick. However, there is an appreciable lack of record evidence concerning whether any Canadian semen sales by the T Bar C Cattle Company were even made so as to require an accounting or disbursement to the defendant. Based upon the current state of the record, this court cannot say a reasonable juror would be able to find that any relevant Canadian semen sales were made at all. As such, there is no evidence of any breach of contract on the part of the plaintiff in this matter. There is no genuine issue of material fact as to this matter. As such, this court need not even broach the question of the materiality of any breach.

Even if this court were required to address the question of materiality, however, the court cannot say that any of the asserted failures of the plaintiff constituted a material breach of the settlement contract. The essence of the settlement consisted of three essential items: 1) dismissal of the plaintiff's claims; 2) conveyance of a 25% ownership interest in Trustmark to the defendant; and 3) payment of \$75,000.00 by the defendant to the plaintiff. The remaining elements of the contract appear mostly incidental to one of these three elements. In light of the record as a whole, the court cannot say that any asserted failures by the plaintiff amount to a "failure to perform a substantial part of the contract or one or more of its essential terms or conditions." Likewise, even if such a failure constitutes a breach, this court does not believe that such a breach substantially defeats the purpose of the settlement agreement. If the plaintiff has committed a breach of the contract in this regard, it may be remedied through an action on the contract, but any such breach does not justify termination of the contract nor

does it excuse nonperformance by the defendant. There is no genuine issue of material fact in this matter, and the plaintiff is entitled to the entry of a judgment as a mendant.

. Damages

The plaintiff seeks the entry of judgment for the amount “of \$75,933.16 and \$6,247.50 in attorney’s fees and costs *plus any additional attorney’s fees and costs incurred since October of 1996 including all costs related to drafting of this rebuttal brief and filing of Gary Hedrick’s affidavit*.” Defendant’s Rebuttal Brief, p. 4 (emphasis added). In that the plaintiff has failed to submit evidence concerning what additional attorney’s fees and expenses to which it believes itself to be entitled, the court is loathe at this juncture to make a final determination regarding damages. The parties shall be permitted to further address the issue before the court renders a monetary judgment in this matter.

. The Plaintiff’s Remaining Claims

Not readily addressed by the parties are the originally asserted claims of the plaintiff in this matter. As the court has determined that the settlement agreement remains valid, all of the remaining claims of the plaintiff are precluded by the operation of the settlement agreement’s terms. The plaintiff may not continue to pursue those claims, and the court shall dismiss them.

. Conclusion

After careful consideration, the court is of the opinion that the plaintiff’s motion for summary judgment should be granted insofar as it seeks an entry of judgment against the defendant on the plaintiff’s claim for breach of the settlement agreement. All remaining claims of the plaintiff, however, should be dismissed in light of the existence of a valid settlement agreement. As a final matter, this court reserves a final determination on the issue of damages on the plaintiff’s claim and shall require the parties to brief the matter further.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_\_ day of May 2001.

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United States District Judge

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Goodwill Shasta River Ranch

DEFENDANT

ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

- ) the motion of the plaintiff for the entry of summary judgment on its behalf is hereby GRANTED IN PART; the motion is hereby granted insofar as it seeks the entry of judgment against the defendant on its claim that the defendant has breached the terms of a settlement agreement and promissory note to the plaintiff; as to the remaining claims the motion is hereby DENIED;
- ) judgment is hereby entered for the plaintiff against the defendant Corrolla S. Hopkins for the plaintiff's claim that the defendant has breached the terms of a promissory note issued to the plaintiff. The plaintiff shall, within twenty (20) days of the date of this order, make appropriate submissions to this court in support of its claim for an appropriate amount of damages to be awarded by this court. A response to the submission and rebuttal to the response shall be made in accordance the time periods set forth by this court's Uniform Local Rules;
- ) in light of the existence of the settlement agreement between the parties to this action, the remainder of the plaintiff's claims are hereby DISMISSED;
- ) the plaintiff's Motion to Strike Answer, Motion for Entry of Default and Motion for Default Judgment are all hereby DENIED AS MOOT.

SO ORDERED, this the \_\_\_\_\_ day of May 2001.

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United States District Judge